

DOCKET NO: 281470US41X PCT

IN THE UNITED STATES PATENT & TRADEMARK OFFICE

IN RE APPLICATION OF :  
GERARD OLIVIER, ET AL. : EXAMINER: KWON, ASHLEY M.  
SERIAL NO: 10/560,822 :  
FILED: APRIL 5, 2006 : GROUP ART UNIT: 1795  
FOR: CO-GENERATION OF :  
ELECTRICITY BY THE SEEBECK  
EFFECT WITHIN A FUEL CELL

PETITION UNDER 37 C.F.R. § 1.181

COMMISSIONER FOR PATENTS  
ALEXANDRIA, VIRGINIA 22313

SIR:

Applicants herein petition the Director to invoke his supervisory authority to require the examiner to examine Claims 19-26.

The originally examined claims 10-16 recited a fuel cell stack a fuel cell stack having two elementary cells as a heat source, an internal cooling duct between the cells as a cold sink, and a plurality of thermoelectric modules connected to the heat source and the cold sink.

On June 15, 2009, Applicants submitted new Claims 19-26 which also recited a fuel cell stack a fuel cell stack having two elementary cells as a heat source, an internal cooling duct between the cells as a cold sink, and a plurality of thermoelectric modules connected to the heat source and the cold sink, but recited these elements in terms of a different claim scope, e.g., it further recited that the heat transfer is via first and second plates.

Claims 19-26 were withdrawn by the examiner in the Office Action of September 26, 2009 because they recite additional details of the invention that were not recited in Claims

10-16, i.e., the first and second plates. The withdrawal of these claims was traversed in the response of November 4, 2009 but was maintained in the Advisory Action dated November 18, 2009.

Claims 19-26 are directed to an invention in the same statutory class as Claims 10-16, i.e., a fuel cell stack. Claims 19-26 were considered to be directed to a distinct or independent invention because the original claims “do not require a plurality of thermoelectric modules ... in two separate layers in contact with two different fuel cells.” It is respectfully submitted that this is not evidence that claim 19 is a distinct or independent invention; merely that it has a different scope than does Claim 10.

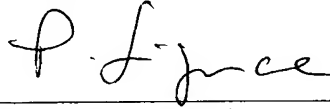
In any case, the present application is in the national stage of a PCT application, and so any restriction requirement is governed by the unity of invention rules under 37 C.F.R. § 1.475 (see MPEP § 1850). In this case, even claims directed to different inventions will be examined in the same application if they “form a single general inventive concept.” Here, original Claim 10 is directed to the general inventive concept of plural fuel cells, wherein the thermoelectric modules are in contact with both a respective one of the fuel cells and an internal duct between the cells and comprising a cold sink. Claim 19 is directed to the same general inventive concept: an internal duct in contact with respective thermoelectric modules, although in this case a plate is also recited, and so must be examined.

Granting of this petition is therefore respectfully solicited.

Although no fee is believed to be required for this petition, any required fee may be withdrawn from the undersigned attorney's deposit account 15-0030.

Respectfully submitted,

OBLON, SPIVAK, McCLELLAND,  
MAIER & NEUSTADT, L.L.P.

A handwritten signature in cursive script, appearing to read "P. J. Signore", is written over a horizontal line.

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